IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3833 OF 2006

Gulab R. Patil .. ... Applicant

Versus

State of Maharashtra .. ... Respondent

Mr. S.S.Salunkhe for applicant

Mr. P.S. Pol, APP for respondent

CORAM : S.C.DHARMADHIKARI,J.

DATE : 6TH NOVEMBER, 2006

P.C.:

1. The applicant apprehends arrest in connection with C.R.No.181 of 2006, registered at Pandharpur Taluka Police Station alleging offence punishable under Sections 143, 148, 149, 341, 323, 363, 395, 506 of Indian Penal Code.

2. The applicant applied for anticipatory bail along with other accused but the application has been rejected by the trial court on 27.9.2006.

3. Criminal Application No.3686 of 2006 was preferred by the accused in this case before me and after the same was heard, it was rejected on 17th October, 2006.

4. Mr. Salunkhe for the application has strongly contended that the name of applicant does not appear in the statement recorded on 13.9.2006. The statement is of father of Santosh Ghadge. Mr. Salunkhe submits that once the applicant’s name does not appear in the FIR then there is no question of applicant being disentitled to pre-arrest bail.

5. The second submission is that the trial court while rejecting the application of the applicant has allowed the anticipatory bail application of other co-accused. In that order the trial court has clearly observed that the matter is arising out of political rivalry. He submits that two conflicting orders are

passed by the same trial judge and the applicant therefore deserves pre-arrest bail.

6. The last contention is that the applicant cannot in any event be charged with the commission of offence of dacoity. He submits that the statement of Shrimant, father of Santosh Ghadge, if perused as a whole, would not indicate that the applicant can be held guilty of offence of dacoity.

7. As far as the first two contentions are concerned, the same were also urged before me when the anticipatory bail application of Rahul S. Randive and others was heard by this Court. During the course of hearing of the same, a copy of statement of Santosh Ghadge was produced. Santosh Ghadge is the Sarpanch of local Grampanchayat. While proceeding for the meeting of the same, the alleged incident took place. The statement of Santosh clearly shows that even the present applicant was involved in the crime. He has named the applicant as one of the persons, who got down from Tata Indica vehicle. Thus, a specific role is assigned in the incident to the present applicant. Therefore, it is immaterial whether the applicant’s name does not appear

in the statement of father of Santosh. This is not the stage to go into this when admittedly investigations are in progress.

8. This aspect would necessarily distinguish the case of the co-accused from that of the present accused. The principle of parity cannot be extended, as I find, prima facie, no substance in the contention of the learned advocate for the applicant that the matter arises only out of political rivalry. As far as the present applicant is concerned, he has been assigned a role and his name has also appeared in the statement of Santosh. I do not, therefore, wish to express any opinion and that would prejudice the case of both sides. At this stage, when investigations are in progress and the ingredients of Section 438 of Cr.P.C. not being satisfied, this is not a fit case for granting pre-arrest bail.

9. It is not for me at this stage to go into the contention as to whether the applicant could be held guilty of the offence of dacoity. That apart, a perusal of the statement of the Sarpanch Santosh Ghadge demonstrates that in addition to the assault by sword

and wooden sticks the assailants including the present applicant took away the gold chain on his person, cash worth Rs.10,000/=, one gold ring and a Mobile Phone. Therefore, custodial interrogation would reveal the details of this aspect further. It is not a case where the FIR and other materials do not disclose commission of any offence or that the complaint taken as a whole is motivated by political rivalry.

10. For all these reasons, the application stands rejected.

(S.C.Dharmadhikari, J.)